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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re M.H., a Person Coming
Under the Juvenile Court Law.

B293079
(Los Angeles County
Super. Ct. No.
18CCJP04494A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

C.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Thomas E. Grodin, Referee. Affirmed.

Lori N. Siegel, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Christine S. Ton, Deputy County
Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, appellant C.B. (mother) challenges both the juvenile court's jurisdictional finding declaring her infant daughter M.H. (daughter) a dependent of the court as well as the court's dispositional orders requiring mother to participate in drug testing, counseling, and parenting classes. As discussed below, we conclude the juvenile court did not err in exercising its jurisdiction over daughter or in ordering mother to participate in a limited number of random drug tests. We conclude mother has forfeited her arguments regarding the court's orders that she participate in individual counseling and parenting classes. Accordingly, we affirm.

BACKGROUND

1. Events Preceding Petition

In June 2018, the Los Angeles County Department of Children and Family Services (Department) received a referral concerning daughter, who at the time was approximately one week old and still in the hospital following her premature birth. The referral stated mother was developmentally delayed, had difficulty understanding ideas and directions, and years earlier used to drink heavily, although she had been sober for more than two years. The referral also reported father suffered from post-traumatic stress disorder resulting from "war experiences." The

referring party worried whether the parents could appropriately supervise daughter.

A Department social worker interviewed mother at the hospital. Mother explained daughter was born prematurely as a result of mother's high blood pressure. Mother told the social worker she had two other children—a five-year-old son, who lived with his father, Jorge M., and an older daughter whom mother had given up for adoption at birth because mother was unable to care for her. Mother stated she last saw her son one year ago, when she visited him at Jorge M.'s home. She said Jorge M. used to abuse her verbally and that was the main reason she left him. Mother was not currently in contact with either her son or Jorge M. She believed Jorge M. falsely reported her alleged alcohol use, stating, “ ‘he doesn't leave me alone.’ ” Mother said she and daughter's father, A.H. (father), were engaged and lived together in Veterans Affairs housing. Father received Veterans Affairs services, including mental health services.

The social worker noted mother “appeared to be mentally delayed, but high functioning.” In particular, the social worker noticed sometimes mother had difficulty understanding questions, but was able to answer if the questions were repeated. Mother told the social worker that, when she was two years old, she was removed from her biological mother and later adopted. Her adoptive mother (maternal grandmother) had already visited daughter in the hospital. Mother said she had been diagnosed with schizophrenia at a young age and used to take medication for panic attacks. However, mother reported that when she was 16 years old her psychiatrist told her “she no longer needed to be seen” and she stopped taking medication. Mother reported no substance abuse, no criminal history, and no history of domestic

violence or sexual abuse. She agreed to drug test for the Department if necessary.

The social worker also spoke with a nurse at the hospital who was caring for mother and daughter. The nurse reported no concerns to the social worker.

The same day, the social worker spoke with father on the phone. Father was very upset the Department was involved with daughter and believed the allegations against mother were false. He yelled at the social worker, telling her she could not come to his home and telling her to contact his Veterans Affairs social worker instead. During a subsequent phone call, father swore at the social worker.

Following its initial interviews, the Department arranged to visit the family's home to speak with the parents and to conduct a home assessment. The day before the home visit, mother texted the Department social worker, accusing the social worker of making false accusations against mother, stating their home meeting would be video-taped, and advising the social worker not to ask any questions related to mother's son or Jorge M. Mother said, " 'if you don't stop after you come to our apartment tomorrow I will have to file a civil suit against you [sic] work for there will also be another social worker with us so just letting you know that. . . . If you do anything to upset me or my baby you will be in big trouble and I will file a complaint against you and [the Department].' "

During the home visit, mother breastfed daughter, changed her diaper, and provided the Department social workers with daughter's recent medical appointment paperwork. The parents did not believe they needed Department programs or services, and mother did not believe daughter needed a regional center

assessment. Father's Veterans Affairs social worker was present for the home visit and described the programs father participated in through Veterans Affairs, which included housing assistance, healthcare services, and clinical case management services. Father was scheduled for monthly medical appointments and was engaged in mental health services. Father's social worker also provided the Department with a letter summarizing father's available programs and services.

A few weeks after the home visit and after receiving notice of a juvenile court hearing date, mother berated a Department social worker over the telephone. Mother spoke "in a loud and boisterous voice," often swearing, and would not allow the social worker to respond. Mother addressed her troubles with Jorge M., insisted it was improper for the Department to ask about her relationship with him, and again indicated Jorge M. was the source of false accusations against her. Mother stated she would not appear in court and refused to take any classes, but said she would take daughter for a regional center assessment " 'if that is all [the Department] need[s] to get out of our lives.' " After hanging up with the social worker, mother called back demanding her attorney's phone number. The social worker explained mother's attorney would be appointed at the hearing, to which mother responded, " 'that's not true! You know who it is and you won't tell me, and if you think you are getting my OBgyn's records you are fucken wrong! You won't get my fucken records!' " According to the Department social worker, it was impossible "to convey the tone and inappropriateness" or "the level of screaming and obscenities that [mother] spewed during the two [phone] conversations." The social worker stated mother "was not stable and was speaking erratic and sounded paranoid.

She kept referring to her stress level and how she may have to go to the Hospital.”

2. Nondetain Petition

In July 2018, when daughter was a little more than one month old, the Department filed a one-count petition under Welfare and Institutions Code section 300¹ on daughter’s behalf (petition). The one count was brought under section 300, subdivision (b)(1) and alleged: Mother “has mental and emotional problems including a diagnosis of schizophrenia and aggressive and paranoid behavior which renders the mother unable to provide regular care for the child. The mother has failed to obtain mental health services for the mother’s mental health condition. The mother has failed to take the mother’s psychotropic medication as prescribed. Such mental and emotional condition on the part of the mother endangers the child’s physical health and safety and places the child at risk of serious physical harm and damage.” Although the Department did not seek to have daughter detained from her parents, the Department did so on the conditions that mother submit to a complete psychiatric evaluation and participate in parenting classes, mother and father comply with court orders, and daughter be assessed by the regional center and be taken to all medical appointments.

At the detention hearing, the juvenile court found daughter was a person described by section 300 and ordered her released to her parents under Department supervision.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

3. Adjudication and Disposition

A combined adjudication and disposition hearing was held on September 25, 2018.

a. Department's Report

Prior to the hearing, the Department submitted its jurisdiction and disposition report to the court. A Department social worker again had visited the family home, where she observed daughter to be doing well. The social worker reported mother and father were "coherent, cooperative, open and engaged throughout the visit." Mother and father both insisted the allegations in the petition were false. Mother denied being paranoid or aggressive, and denied having mental or emotional problems. However, mother reported she was diagnosed with schizophrenia when she was two years old. She said a psychiatrist prescribed medication for her when she was 16 years old, but she could not remember what it was called. Mother also indicated she had gone in for a mental health assessment, as the Department had requested, but the doctor she visited did not conduct such assessments. That doctor told the Department social worker mother needed to see a forensic psychologist, which it did not appear mother had done by the time of the September 25, 2018 hearing.

Father believed the first Department social worker filed the case out of spite. He denied mother had any mental or emotional issues and stated she was able to care for daughter. Nonetheless, father also stated he did not trust mother with daughter "when he is not in the home" and he tried not to leave mother alone with daughter. Father reported he had been using marijuana since 1987 for back and leg pain and currently smoked marijuana twice

a day. He reported no mental health history, but stated he had been diagnosed with post-traumatic stress disorder.

The Department reported daughter had a few medical issues, to which the parents were attending with the help of daughter's doctors. Daughter was born with a small muscular ventricular septal defect, which a pediatric cardiologist assessed and reported "will likely close spontaneously, in time." Daughter also suffered from reflux and weight issues, which the parents were treating. Finally, daughter had been referred to the regional center because both mother and her son had developmental delays.

The Department social worker also spoke with maternal grandmother, who indicated her only concern was that mother was "going through a lot of emotions as a result of the consequences of [Jorge M.] taking [her son] from her." Maternal grandmother said Jorge M. had been very abusive toward mother. Maternal grandmother stated mother did not have a history of substance abuse, but mother was diagnosed with schizophrenia 22 years earlier for which mother was prescribed and took medication and attended individual therapy. Although maternal grandmother reported mother was developmentally delayed, maternal grandmother did not believe mother's developmental delay impeded her ability to care for daughter.

The social worker also spoke with Jorge M. Jorge M. stated he had been in a 12-year relationship with mother. During that time, Jorge M. stated mother exhibited mental health issues. He said mother "would scream a lot and become aggressive." Jorge M. also told the social worker that, after their son was born, mother was unable either to feed him or to change his diapers, and would shake him. Jorge M. believed medicine that

mother took following a knee surgery made her “ ‘crazy’ ” and she was “seeing things, screaming, and saying [her son] was the devil and she needed to kill him.” At one point, Jorge M. called the police and took son from mother. Jorge M. said there is no custody agreement regarding their son. Jorge M. told the social worker that, in 2010, mother was diagnosed with schizophrenia and prescribed medication. Jorge M. did not know if mother took the prescribed medication. He believed mother had the “mentality of a 9-year-old” and he “refuses to allow [mother] to have a relationship with [her son] because she cannot take care of [him].”

In its report, the Department noted that, although initially mother and father were very resistant to family services, they had become more receptive to services. Prior to the adjudication hearing, mother and father each submitted one random drug test. Mother’s results were negative for all tested substances, while father tested positive for cannabinoids. The Department believed that in light of daughter’s young age, mother’s unresolved developmental and mental health issues, and father’s marijuana use, juvenile court involvement was “vital.”

b. Hearing

At the adjudication hearing, the juvenile court admitted into evidence among other things a letter indicating mother had enrolled in parenting classes (although it was not clear whether she had attended any classes). The court also admitted into evidence a brief summary of a “mental evaluation” indicating mother had anxiety, poor oral hygiene, and acute gingivitis. The evaluation appears to have been done by a physicians assistant (and not a forensic psychologist) who also assessed her oral

hygiene. Mother was advised to have a “follow-up” visit in three weeks as well as in one month “for Mental health referral.”

At the hearing, mother’s counsel urged the juvenile court to order informal supervision under section 360, subdivision (b). In the alternative, counsel asked the court to dismiss the petition. Mother’s counsel argued Jorge M. was biased against mother and not believable. Counsel argued Jorge M.’s abusive behavior, including taking mother’s son from her, caused many of mother’s issues and challenges. Counsel stated daughter was safe with mother, and noted mother had enrolled in parenting classes, tested negative for drugs, and had been following through with the court’s orders. Counsel for father also requested either informal supervision or dismissal of the petition.

Counsel for daughter argued the juvenile court should sustain the petition or order informal supervision. Counsel noted daughter’s young age and health issues, “coupled with mother’s mental health history and her diagnosis, . . . does place [daughter] at serious risk of harm.” Daughter’s counsel also noted Jorge M.’s statements about mother’s mental health and behavior not only were concerning but also were supported by mother’s and grandmother’s reports of mother’s currently untreated schizophrenia diagnosis. Although counsel believed the parents were doing their best, counsel urged the court to order supervision, whether informal or formal.

Finally, counsel for the Department argued against informal supervision and argued instead the juvenile court should sustain the petition. Counsel noted the parents’ initial refusal to cooperate with the Department, mother’s extreme behavior, and father’s statement that he tried not to leave daughter alone with mother.

As to disposition, counsel for mother argued the juvenile court should not require mother to participate in random drug testing. Counsel stated, “Mother has been testing negative for the Department. If, your honor, is not inclined to strike it [i.e., the random drug testing requirement] entirely, then perhaps mother to have eight random drug tests, if all clean, mother to no longer test.” Daughter’s counsel joined in mother’s alternative request for eight random drug tests.

The juvenile court sustained the petition as alleged and declared daughter a dependent of the court under section 300, subdivision (b)(1). The court placed daughter with her parents under Department supervision. The court ordered mother to provide eight random drug tests, and “if any test is missed or dirty, she is to do a full drug treatment, with random testing.” The juvenile court also ordered mother to participate in a parenting class, to take all prescribed medication, and to participate in individual and mental health counseling, including a psychological assessment and psychiatric evaluation.

4. Appeal

Mother appealed the juvenile court’s September 25, 2018 jurisdictional findings and dispositional orders.

DISCUSSION

1. Jurisdiction

a. Standard of Review

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.) We will affirm if there is reasonable, credible evidence of solid value to support the court’s findings. (*Ibid.*)

“ ‘In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of

the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." ' ' (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Under this standard, our review " 'begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.' " (*In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) "We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

However, "[i]t is well settled that the standard is not satisfied simply by pointing to ' "isolated evidence torn from the context of the whole record." ' ' [Citations.] Rather, the evidence supporting the jurisdictional finding must be considered ' "in the light of the *whole record*" ' 'to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value.' " (*In re I.C.* (2018) 4 Cal.5th 869, 892.)

b. Section 300, Subdivision (b)(1)

The juvenile court exercised its jurisdiction under section 300, subdivision (b)(1). Under that subdivision, a juvenile court

may assert dependency jurisdiction and declare a child a dependent of the court when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.”

“The legislatively declared purpose of these provisions ‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*’ (§ 300.2, italics added.) ‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) “ ‘The purpose of dependency proceedings is to prevent risk, not ignore it.’ ” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.) For children of “ ‘such tender years,’ ” such as daughter here, “ ‘the absence of adequate supervision and care poses an inherent risk to their physical health and safety.’ ” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767.)

A parent’s failure to take responsibility for, or to recognize the negative effects of, his or her conduct is relevant to the court’s consideration of risk under section 300. “ ‘[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.’ ” (*In re A.F.* (2016) 3 Cal.App.5th 283, 293.) “One cannot correct a problem one fails to acknowledge.” (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)

c. Substantial evidence supports the juvenile court's exercise of jurisdiction under section 300, subdivision (b)(1).

Mother argues substantial evidence does not support the juvenile court's jurisdictional finding. We disagree.

Although mother correctly points out that during the pendency of these proceedings she and father appropriately cared for daughter, mother incorrectly minimizes her own behavior during the same time period. During the course of these proceedings, mother exhibited extreme and unstable behavior, including screaming and swearing at social workers. Alone, such behavior may not have supported a finding of jurisdiction. However, mother's troubling behavior was not the only relevant evidence. Mother, maternal grandmother, and Jorge M. all reported mother had been diagnosed with schizophrenia. It was also uniformly reported that mother was not currently taking medication for that diagnosis. In addition, Jorge M. reported mother had been unable to take care of her son, had stated her son was the devil and she needed to kill him, and at times she shook him. Similarly, father stated that although he believed mother could take care of daughter, he did not like leaving mother alone with daughter, who was only an infant and clearly of tender years. (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 767.) Finally, mother denied having any current mental health issues, which indicated she may be unlikely to seek help.²

² At the adjudication hearing, counsel for daughter noted a last minute information filed with the juvenile court indicated mother recently had begun taking Zoloft for minor depressive disorder. That document was not included in the record on appeal.

(*In re A.F.*, *supra*, 3 Cal.App.5th at p. 293; *In re Gabriel K.*, *supra*, 203 Cal.App.4th at p. 197.) Considering the totality of this record, we conclude substantial evidence supports the juvenile court’s jurisdictional finding under section 300, subdivision (b)(1). (*In re I.C.*, *supra*, 4 Cal.5th at p. 892.)

Mother argues the juvenile court improperly speculated that her past diagnosis of schizophrenia put daughter at current risk of harm. First and importantly, as noted above, mother’s schizophrenia diagnosis was not the sole support for the juvenile court’s exercise of its jurisdiction. Second, the record is unclear exactly when mother was diagnosed with schizophrenia—mother stated she was diagnosed when she was two years old, maternal grandmother reported mother was diagnosed when she was 16 years old, and Jorge M. stated she was diagnosed in 2010 when she was approximately 30 years old. Similarly, the record is unclear as to mother’s need for medication to treat her schizophrenia. Mother stated that when she was 16 years old (i.e., approximately 22 years ago) a psychiatrist told her she no longer needed medication; however, elsewhere in the record mother stated she was prescribed medication at age 16. In contrast, Jorge M. reported mother was prescribed medication in 2010. Finally, although at the adjudication hearing mother submitted a summary of a “mental evaluation” showing mother was seen for approximately one hour, apparently by a physicians assistant, it is unlikely a medical provider could assess mother’s alleged schizophrenia in that time frame. Given these uncertainties in the record coupled with daughter’s young age and mother’s extreme behavior during these proceedings, we conclude it was not purely speculative to consider mother’s

admitted and currently untreated schizophrenia in finding daughter was at substantial risk of serious harm.

Mother also claims the juvenile court should not have believed Jorge M.'s statements about her and should not have put much weight in her combative interactions with Department social workers. According to mother, Jorge M. lied about her ability to care for her son and, even if his statements were true, she clearly was able to care for daughter now. She also explained her behavior toward Department social workers was simply a mother's natural apprehension and frustration at having the Department investigate her family within days of giving birth. However, these are evidentiary matters and are the province of the juvenile court. We do not reweigh the evidence or evaluate witness credibility. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.) Accordingly, mother's arguments are not persuasive here.

2. Disposition

a. Standard of Review

Both parties contend we should review the juvenile court's dispositional orders for an abuse of discretion. Although case law supports application of the abuse of discretion standard here, other cases apply the substantial evidence standard of review. (*In re T.M.* (2016) 4 Cal.App.5th 1214, 1219 [noting cases applying different standards of review to juvenile court disposition orders].) "Although this discrepancy has been acknowledged [citation], it is unclear 'whether the two standards are so different in this context.'" (*Ibid.*) As discussed below, under either standard of review, we find no error.

b. Drug Testing

The Department claims mother forfeited her argument that the juvenile court abused its discretion in ordering random drug testing. We disagree.

At the disposition hearing, counsel for mother objected to the requirement that mother participate in random drug testing and argued that requirement should be “stricken entirely.” Counsel indicated a willingness to accept a limited number of random drug tests only if the juvenile court was not inclined to strike the requirement entirely. Accordingly, mother did not forfeit this issue.

The juvenile court is granted wide discretion to make “any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child” declared a dependent of the court under section 300. (§ 362, subd. (a).) The court may “direct any reasonable orders to the parents or guardians of the [dependent] child . . . as the court deems necessary and proper. . . . The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (§ 362, subd. (d).)

Mother argues there was no competent evidence that she currently was a substance abuser and, therefore, no reasonable ground for the juvenile court to order she submit to drug testing. She claims it was improper to give any weight to the allegation made by an anonymous caller that she abused alcohol years earlier, but was currently sober. However, in addition to the anonymous caller’s statements, mother also exhibited bizarre and extreme behavior during the pendency of these proceedings. It was unclear why mother acted as she did. In cases such as this

involving children of tender years, the juvenile court does not err in seeking to rule out a potentially dangerous substance abuse problem. (See *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 767 [in cases involving children of tender years a “finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm”].) Finally, at the disposition hearing daughter’s counsel agreed to the propriety of mother submitting to a limited number of drug tests. In light of the record and the juvenile court’s broad discretion to make orders for the care and supervision of the dependent child, we conclude the juvenile court did not err in ordering mother to submit to eight on demand, random drug tests, with the understanding that if those tests were all clean mother need not do further drug testing.

c. Individual Counseling and Parenting Classes

The Department also argues mother forfeited her arguments with respect to individual counseling and parenting classes. On this point, we agree.

“[T]he forfeiture doctrine applies in dependency cases and the failure to object to a disposition order on a specific ground generally forfeits a parent’s right to pursue that issue on appeal.” (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345.) “[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court.” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) “The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected.” (*Ibid.*) Although an appellate court has the discretion to excuse forfeiture, this discretion “should be exercised rarely and only in cases

presenting an important legal issue.” (*Ibid.*) Here, mother did not object below to the juvenile court’s orders requiring her to participate in individual counseling and parenting classes. Thus, mother has forfeited those issues on appeal, and we decline to exercise our discretion to address them.

DISPOSITION

The jurisdictional finding and dispositional orders are affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.